IV.

THE POWER OF DISSOLUTION.

THE question in everybody's mouth in England for some time past has been, "When will Parliament be dissolved?" A late declaration of the Ministry has indirectly given the answer that it will not be dissolved just yet. The present House of Commons does not reach the full number which a House of Commons ought to reach. It has not six hundred and fifty-eight members. The number is a somewhat strange one, a number which has come about not by design, but by accident; but, as it has come about, it seems to be accepted as being in the eternal fitness of things. Six hundred and fifty-seven members would be too few; six hundred and fifty-nine members would be too many. Certain boroughs were disfranchised in the last Parliament, and the seats which they lost have not yet been given to any other boroughs. The House is therefore imperfect. The imperfection, we are told, is to be made up before the present Parliament comes to an end. But the Government has no proposal to make at present. Therefore Parliament will not be dissolved at present. Seemingly it will not be dissolved till next year.

By the present law of England a Parliament may last seven years from the time of its meeting. It can not last longer. As soon as the seven years are fully up, it falls to pieces of itself. What would happen if the seven years came to an end when the Houses were actually in session, no man can tell. The Speaker of the House of Commons has, from time immemorial, kept, as his last resource against disorderly members, the power of "naming" a member—that is, the power of calling him Mr. A or B instead of "the honorable member for such a place." Till lately the power was a mysterious one, kept in reserve, but never exercised. The Speaker sometimes threatened to "name" members, but no member

ever was "named." A Speaker of a former generation was once asked what would happen if he did "name" a member. He answered, with much solemnity, "The Lord in heaven only knows." The mystery has been solved in the present Parliament. A member has been "named," and nothing happened. Not only did the course of nature go on as before, but the House of Commons went on, and Major O'Gorman went on being a member of it. But what would happen if a Parliament were really allowed to die a natural death no one knows. It is certain that when the seven years were fully up the Houses would cease to be Houses. The members would be no longer members; the Speaker would be as another man. What would happen to the mace and the Speaker's wig, it is not for the uninitiated to ask.

As a matter of fact, things have never come to this stage. No Parliament, since the establishment of the existing laws about the duration of Parliaments, has ever died a natural death. All have been dissolved by the special act of the Crown before the time came when the operation of the law would have put an end to them. While the law fixes seven years as the longest possible life of a Parliament, custom has lessened the time to six. No one expects that the Parliament which first met in 1874 will be allowed to perish of itself in 1881. The only question—a question left to the uncontrolled decision of the Crown and its advisers—is, whether Parliament will be dissolved in 1879 or not till 1880.

Now the phrase "dissolution of Parliament" is in everybody's mouth, and yet it may be suspected that comparatively few people bear in mind what the exact meaning of the phrase is. It may be suspected that still fewer ever think what the power of dissolution in the Crown really implies, and how it came about that the Crown should be possessed of such a power. It is not at all unlikely that many people, if they were asked, would say that the House of Commons comes to an end by a dissolution, but that the House of Lords goes on untouched. They see that a member of the House of Commons ceases by virtue of the dissolution to be a member of the House of Commons—to be what is commonly called a member of Parliament. He may or he may not recover that position by a fresh election; but he loses it at least for a season. For some days, at all events, no one puts the letters M. P. after anybody's name. But the temporal peer who sits by virtue of an hereditary right, the spiritual peer who sits by virtue of an elective office,* takes his

* The Bishop's office, and with it his present or future claim to a seat in Parlia-

seat again in the next Parliament without any fresh election or nomination, and he loses nothing of title or precedence during the time when there is no Parliament in being. Hence it might seem at first sight that, while every dissolution makes a break in the existence of the House of Commons, it makes no break in the existence of the House of Lords. The next House of Lords, it may be said, will consist of exactly the same persons—or, in the case of deaths, of their representatives—as the present House of Lords, while the next House of Commons is practically certain to consist to some extent of different persons from the present House, while it is theoretically possible that it might consist wholly of different persons. But, in point of fact, it is by no means certain that the next House of Lords will consist of exactly the same persons, or their representatives. Part of the House of Lords is as strictly elective as the House of Commons itself. Sixteen of its members, the representative peers of Scotland, are not only elected, but elected for one Parliament only. It is not at all practically likely, but it is perfectly possible, that the peers of Scotland may choose a wholly different set of representatives in the next Parliament from those who represent them in the present. It is perfectly possible that sixteen members of the present House of Lords may find no seats in the next. And that large majority of the peers who will have the same right to seats in the next Parliament which they have to seats in the present will still sit, not by continuous succession from the present Parliament, but by wholly fresh ceremonies of admission. They will sit by virtue of a fresh summons from the Crown and of a fresh oath taken at the beginning of the next Parliament. The peer has a right to his fresh summons, which can not be denied to him; but it is by virtue of the fresh summons that he sits. In short, each particular lord goes on, with all his personal privileges, just as much whether Parliament is in being or not. But the House of Lords, as a body capable of meeting and acting, perishes, just as much as the Commons, by the dissolution of one Parliament,

ment, is "elective," whether we look to the formal election by the chapter in the case of the elder sees, to the formal nomination by the Crown in the case of the two new sees, or to the practical appointment by the Crown in all cases. "Election" is an act which may be done by one elector as well as by many; in either case choice is exercised, while in the case of hereditary succession there is no choice.

At present, except in the case of five privileged sees, the Bishop's office does not give him an immediate right to a seat in Parliament. He only succeeds to it in turn, the three junior Bishops having no seats.

and comes to life again, no less than the Commons, only by the meeting of the next.

The power of dissolution then is the power of putting an end to the being of both Houses of Parliament before the time when they would come to an end by the operation of the law. This power the law of England vests absolutely in the King or Queen; but, like the other powers of the Crown, it must, according to the conventional constitution, be exercised only by the advice of the Ministers of the Crown. It is indeed understood that the Sovereign has somewhat more of personal choice in the matter of dissolutions than in most other matters. But it is only a negative choice. It is understood that the King or Queen may constitutionally refuse permission to the Minister to dissolve Parliament; it is not to be supposed that any King or Queen would think of dissolving Parliament except by the Minister's advice. Still the King or Queen has the legal power of dissolving Parliament at any moment. Now a moment's thought will show that this is a power which is by no means necessarily involved in the action of the Executive branch of the Government. The President of the United States, large as are his powers in many ways, has no power of dissolving Congress. The founders of the American Constitution clothed the Executive Chief of the Union with not a few of the powers of kingship; just as, when the Roman consuls took the place of the Roman kings, it was not so much that the actual powers were lessened, as that securities were taken for the manner of their exercise. The powers are in themselves kingly; but he who exercises them is elected only for a fixed term; he is responsible to the law even during that term; in the discharge of many of his powers he has to obtain the approval of one branch of the Legislature for his acts. But some kingly powers are refused to him altogether, and among them is the specially kingly power of putting an end to the existence of the Assembly of the nation. If we turn to the chief European example of a true republican constitution, to the Confederation of Switzerland, we are still further from finding any such power vested in the Executive of the Union. Not only has the Swiss Federal Council no power of dissolving the Federal Assembly, but the notion of its possessing such a power is simply inconceivable. The Federal Council has none of the kingly powers of the American President, nor has the officer who bears the same name, the President of the Confederation, any personal authority apart from the Council of which he is the simple chairman. In fact, the relations between the Swiss Federal Council and

the Swiss Federal Assembly are of such a kind, they are so different from the relation in which an English king or an English minister stands to Parliament, they are so different from the relation in which an American President stands to Congress, that the notion of a power of dissolution being vested in the Federal Council is almost too absurd to think of. In England the power exists; in America it does not exist; in Switzerland we may say that it could not exist. In America it does not exist; there are good reasons why it does not exist; but there is no absurdity on the face of it in supposing that it might have existed. And it actually does exist in the latest republican constitution which any great nation has formed for itself. By the present French Constitution the power of dissolution is vested in the President, but with a restriction which is evidently borrowed from the kindred restriction which is placed on the power of the American President in some other matters. The French President may dissolve the Assembly, but only with the consent of one House of the Assembly itself.

Of this last arrangement I shall have to speak again. Let us see what are the results which we have gained at present. In England, where the executive power is vested in a king, the power exists without restriction. In France, where the executive power is vested in a president whose position, while its lasts, is very much like that of a king, the power exists, but under restrictions. In America, where the President's position is much less kingly than in France, but where he still has some kingly powers, it does not exist at all. In Switzerland, where not a rag or shred of kingship or kingly power cleaves to the Executive Magistrate, it not only does not exist, but it can not be conceived as existing. Why is there this difference? Let us, for the present, put France aside, and look to the three constitutions, English, American, and Swiss, which have a clear historical connexion with one another. Why does the power of dissolution exist in England, and not in America or Switzerland? It may be answered that the reason simply is, because both the American Congress and the Swiss Federal Assembly are so much shorter-lived than the English Parliament. The Congress exists for two years, the Assembly for three; while the English Parliament, if left to itself, exists for seven. It may be argued that, when an Assembly has so long a possible existence as the English Parliament, it is prudent to vest somewhere or other the power of shortening its life in case of need, but that there is no need for any such power where the legal life of the Assembly is so short as it is in America

and in Switzerland. And no doubt this has practically a good deal to do with the matter. But this is not the origin of the difference between the practice of England and that of America and Switzerland. The English King had the same power of dissolution when Parliaments came to an end after three years. The real cause of the difference is in the nature of the executive power in the three countries. In England that power takes the form of a king; in America and Switzerland it takes the form of a republican magistracy, of the President in the one confederation and of the Council in the other. Now I do not mean that the power of dissolution is absolutely and inherently necessary in the case of a kingly executive, and absolutely and inherently impossible in the case of a republican executive. There are Kings who have not the power of dissolution, and in France there actually is at this moment a President who has a power, though a restricted power, of a dissolution. All I mean is that the power is natural and obvious in the case of the King, and that it is not natural or obvious in the case of the republican Magistrate. If the King has not the power, if the republican Magistrate has the power, we may be sure that it is the result of deliberate design, not of unconscious constitutional growth. The power exists or does not exist, not because it came so by the silent working of historical causes, but because the power has been deliberately granted or deliberately refused from a conviction of the good policy of one arrangement or the other. In constitutions which were left to grow of themselves, the result is not likely to be the other way. In default of any deliberate enactment decreeing otherwise, the power of dissolution grows up naturally and easily in the case of a king; it does not grow up naturally or easily in the case of a republican president or council.

I say that the power of dissolution grows up naturally and easily in the case of a king. That is to say, it follows almost as a matter of logical inference from a certain theory as to the relations between the Executive and the Legislature—that is in a kingly state between the King and his Parliament—which theory is likely to grow up in any state governed by kings, which as a matter of fact did grow up in England, but which never could grow up in any state where the executive takes a republican form. The King's power of dissolving Parliament is part of a theory as to the kingly office generally which gradually grew up under the influence of lawyers. The lawyers' theory looks on the King as the root and center of everything; he is the one fountain from which all power, all honor,

even all property, is held to flow. The lawyers indeed always read history backwards; their theories have no root of primitive fact to stand upon; they commonly mistake the cause for the effect, and the effect for the cause; they mistake the rule for the exception, and the exception for the rule. But the mere logic of the process is commonly perfect. The objection must be taken at the very beginning. If once the premises are allowed, all the particular inferences follow as a matter of course. The King gradually became all that the lawyers say that he is, and, allowing for the practical though mainly unwritten restrictions of later times, he remains all that the lawyers say that he is. But he became so merely because the lawyers chose to say that he was so, not because he had either been so from the beginning or had become so by any formal enactment. Historically the lawyers' theory of kingship has not a leg to stand upon; but as a matter of reasoning it hangs beautifully together. Once admit the first link in the chain, and all the others follow without a break. From the lawyers' theory of the kingly power, it follows that the Parliament is the King's Parliament, as the army is the King's army, as the courts of law are the King's courts. The very name of Parliament, as compared with names like Congress or Assembly, points to the special relation between the Parliament and the king. A Parliament is in plain English a *talk*, a *colloquium*, in less pure Latin a *parlamentum*.* But it must not be thought that Parliament is so called, as nowadays it well might be, from the talk which its members have among themselves. The Parliament is historically so called because it came together to talk, to *parley*, with the King. The Speaker of the House of the Commons, who would never have got that title from his functions within the House, is so called because he was the great instrument of such talk or parley, the mouth-piece through which the Commons spoke to the King. The Speaker was a speaker indeed, when Sir Arnold Savage made those long discourses—one is tempted to call them sermons—which wore out the patience even of a strictly constitutional king like

* The name appears in French in the twelfth century, in Latin in the thirteenth. But it is merely a translation of the "deep speech" which, according to the English Chronicle, King William had with his Witan in the eleventh.

The oldest Latin spelling is "parlamentum," formed regularly from "parlare" = "parabolare." "Parlement" is the regular French form. "Parl*ia*mentum," "parl*ia*ment," seem to mark a popular English pronunciation.

The equivalent word "colloquium" is sometimes used in England, and is very common in Germany. "*Loqui cum rege*" is a usual phrase.

Henry IV.* But, in the lawyers' theory, Parliament is not only an assembly which comes together to talk to the King; it is an assembly which derives its power to talk or to do anything else wholly from the King's grant. In every Parliament, the lawyers would say, the Speaker of the House of Commons asks of the King for the confirmation of the accustomed privileges of the House. In this theory, as Parliament is called into being by the King's writ, he who called it into being can at any moment put an end to its being. In the theory of the lawyers the King can create and the King can destroy; special enactments may bind him speedily to follow each act of destruction by a fresh act of creation; but the power of creation and destruction is his nevertheless.

Now it needs no proof that no such theory as this could ever grow up in the case of a republican executive, whatever form such executive might take. It is not simply a question of the amount of power. We can conceive a republican magistrate clothed with much greater powers than those of a constitutional king. I must here draw a distinction. In one sense, the powers of a president or of a republican executive of any kind are almost of necessity greater than those of a constitutional king. That is to say, where the King can act only by the advice of his ministers, his personal will will count for less than the personal will of the President. The President may have a narrower range of legal power than the King, and yet may have a freer exercise of power within that range. That is, the President may be more powerful than the King, less powerful than the King's minister. What I now mean is that we can conceive a President, or other republican executive, clothed with powers which are not only greater than the powers which the constitutional King personally exercises, but greater than the powers which the law gives him, and which his ministers exercise in his name. We have very lately seen in practice that a formally smaller power, vested in a president, may really be greater than a formally greater power vested in a king. The English King has, by law, an unfettered power of refusing his assent to any measure, even though it has passed both Houses of Parliament.† But no English

* See Stubbs's Constitutional History, iii., 29.

† This power is commonly called the royal *veto*; but that name is not strictly accurate. The name *veto* must come either from Rome or from Poland, and both in Rome and in Poland it meant something quite different from the process to which the name is applied either in England or in America. A power of *veto*, a power of forbidding, means a power of stepping in to hinder something which, if the power is not exercised, will naturally take place. It does not imply that the active assent of the person

king, no English minister, ever thinks of exercising such a power. In Switzerland no such power exists. In America the President has a conditional power of refusing his assent, and that power is freely exercised. The President is in this case not only more powerful than the King, but actually more powerful than the Minister. Still it is only in practice that he is more powerful; in theory the King is in this matter more powerful than the President. But a republican president might be clothed with the fullness of kingly power, according to the highest views of kingly power: he might be, not of usurpation but of free grant, ten years president or consul for life; and yet no one would dream that the other powers of the state drew their authority from him. The Assembly of the nation might be far weaker than the Executive Chief of the nation, and yet no one would argue that the powers of the Assembly were the grant of the Executive Chief. The Parliament would still not be his Parliament, in the sense in which, according to the lawyers' theory, the English Parliament is the King's Parliament. He might have the power of dissolving Parliament; but he would have it, not because the Parliament was called into being by him, but because the power which had called both him and the Parliament into being had chosen to invest him with that power.

In the case of America then the power of dissolution does not exist, because it was not a power which was inherent, or even obvious, in the idea of a republican president, while the founders of the Constitution were not led by any conviction of its expediency to clothe the President with it. In England it does exist, because, though not necessarily inherent in the idea of a king, it was an

invested with the power of *veto* is needed; it rather implies that it is not. The Roman Tribune could hinder any vote of the Senate or people, any act of the consuls or other magistrates. But those votes and acts did not need the active assent of the Tribune; the Tribune could forbid their taking effect; if he held his peace, they took effect. In England, on the other hand, a bill which has passed both Houses of Parliament is of no force till it has received the active assent of the King; if he wishes to stop the measure, he has no need to forbid; he has simply to decline to confirm. So, except in one particular case defined by the Constitution, the assent of the American President is needed for a measure which has passed both Houses of Congress. Both in England and in America it is an active assent which is needed; dissent is negative. Where there is the *veto* strictly so called, dissent is positive. The true *veto* would be, if an act of Parliament or Congress took effect of itself if the King or President said nothing, but might be stopped if the King or President stepped in to forbid it.

In the Convocation of the University of Oxford there is a real power of *veto*. The Chancellor or Vice-Chancellor alone, or the two Proctors together, can hinder any measure; but their active assent is not needed.

obvious inference from a certain prevalent theory of kingly powers, and because no conviction of its inexpediency has ever led to its abolition, either in law or practice. I say, either in law or in practice, because it is of course conceivable that the power of dissolution might have remained untouched by any legal enactment, and might yet have become as unheard of in practice as the kindred power of refusing the royal assent to a bill which has passed both Houses. But, though the power of dissolution is an obvious inference from the lawyers' theory of kingly power, yet, like the other so-called prerogatives of the Crown, it grew up by degrees and by force of circumstances. The power of dissolution in one sense must, in the case of any assembly, be vested somewhere, and it is most naturally vested in the chairman of the Assembly. There must be some power somewhere of saying that the business of the meeting is at an end, and that it is therefore time for the meeting to break up. Even in the mysterious case of a Parliament being dissolved at a certain moment by mere tract of time, it would most likely be thought seemly that the Speaker of each House should announce that the fatal hour had come, much as Archbishop Heath announced the fact of Queen Mary's death to the Parliament which was then sitting, and which was thereby dissolved. But such a power as this is quite distinct from the power of dissolving at pleasure—of dissolving, it may be, in the midst of business—of dissolving, it may be, against the will of the Assembly dissolved—of dissolving, it may be, by way of punishing some proceeding of the Assembly—of dissolving in the hope of getting rid of an obnoxious assembly, and of finding some future assembly more ready to do what is wished. This kind of power of dissolution seems to involve several things. It is not a power likely to arise in an early or primitive state of things ; it implies a very considerable advance of constitutional growth. It implies that the Constitution is representative and elective. It implies, we may safely add, that the form of the executive is monarchic. And we may further add that the power of dissolution in fact arises out of the power of prorogation. The power of putting an end to the existence of the Assembly springs out of the power of artificially prolonging its existence.

The primary object of dissolution in a constitutional state is to get rid of the existing Legislature in the hope that another may come in its place which may better suit the purposes of those who dissolve it. Supposing everything to be done without force or corruption, supposing that it is intended that the new Assembly

shall be brought together by perfectly fair means, such a dissolution forms an appeal to the country. The King or minister virtually says to the electors: "Your present representatives and I do not agree; do you judge between us; send back the same men or other men, according to the decision which you take in the matter." This is a fair and constitutional appeal. Of course, a dissolution might be made the opportunity of getting together a packed assembly by some unlawful means; but we are supposing this not to be the case. The appeal is to the electors to judge between the Executive and the existing Assembly. They determine, by their choice of members of the new Assembly, whether they approve of the acts of the late Assembly or not. And the principle is exactly the same in a case which at first sight seems to be exactly opposite. In the case which has just been put, the Executive dissolves, because the existing Assembly is against it, while it has at least the hope that the country at large may be for it. But sometimes an executive which is in no kind of present danger will dissolve in order to get rid of any chance of future danger. In the case already put, the Executive dissolves because it is in a minority in the Assembly; in the case now to be put, it dissolves while it is in a majority in the Assembly. The Executive has the Assembly with it; it believes that it has the nation with it. But the Assembly is drawing near the term of its natural life; there must, in any case, be a dissolution before long. The Executive may therefore think it wise to dissolve at once, while it feels sure that the new elections will be in its favor, rather than to wait, and so to run the risk of something happening which may make the elections less favorable. A dissolution thus skillfully timed may secure to the Executive a renewed lease of power for the whole term of the next Assembly. But such a dissolution as this is no less an appeal to the country than the other class, the "penal" dissolution. The country is appealed to, to give the Executive the support of a new assembly, even though in this case it has not lacked the support of the old one. The country is called on to pronounce its opinion on the conduct of the Executive by its choice of a new assembly, even though the conduct of the Executive may have been in no way censured by the existing Assembly.

It is plain that this very elaborate and artificial use of the power of dissolution implies an advanced stage of constitutional growth. It implies the existence of a representative and elective assembly. In a constitution of the earliest type, whether aristocratic or democratic, the power of dissolution in this sense could not exist. In such con-

stitutions there is no election or representation. The Assembly consists of the whole body, either of the nation or of a privileged class in the nation. In such constitutions there can be no dissolution of the Assembly, except in the sense of declaring that the business of that particular meeting is over. When the Assembly meets again, there is no change in the persons who compose it; every man who was at the first meeting can, if he chooses, appear at the second. The democratic *Ekklêsia* of Athens and the aristocratic Great Council of Venice were alike incapable of dissolution; the *Landesgemeinde* of Uri or Glarus is incapable of dissolution in our own day. Not only is there no constitutional power to dissolve it; its dissolution, in the sense in which we speak of the dissolution of an English Parliament, is a contradiction in terms. But, besides this, the power of dissolution not only implies that the Assembly is elective and representative, it implies that the assembly is, perhaps not necessarily dominant, but at all events very powerful in the state. It implies that the approval of the Assembly is needed for the acts of the Government, and that the government can not be carried on in the teeth of a hostile assembly. It does not necessarily imply that the elaborate ministerial system of England is in full working; but it does imply that the Assembly has the power of legislation and the power of the purse. The King dissolves the Parliament which refuses supplies, or which refuses to pass the measures which he approves and brings in measures which he disapproves. If he is a scrupulous ruler, he does this in the hope that a new election may give him a more friendly Parliament; if he is an unscrupulous ruler, he does it in the hope of securing a complying Parliament by irregular means, perhaps even with the object of getting rid of Parliaments altogether. All this may very well happen in that stage of constitutional progress when the powers of Parliament are fully established by law, when it is acknowledged that the King may lawfully do this, but may not lawfully do the other, but when King and Parliament meet, and sometimes, like Henry IV. and Sir Arnold Savage, dispute, face to face, without the conventional device of a ministry as a guide to King and Parliament alike. But the refinement of a dissolution which is not penal, the dissolution of a friendly Parliament because at that moment it is likely to have a friendly successor, while there is a chance that a year or two hence its successor may be less friendly—such an extreme subtilty as this is more in character with the rule of a minister than with the rule of a king. It is the calculation of one who not only depends on the will of the

national Assembly for the acceptance of his legislative measures or for the means of carrying out his policy, but who further depends on its will for his continuance in any place of authority at all.

Now it hardly needs proof that this last state of things at least can have no place in a true republican constitution. The position of the King, while the King still acts personally, is one in which an American President may easily find himself. The President may suggest a certain course of legislation, and Congress may refuse to legislate on the matter. The President may wish to carry out some scheme of policy, and Congress may refuse him the means to carry it out. And yet each of the two powers may be acting within its constitutional right, without the slightest breach of the law. Experience indeed has shown that, when things do come to a real struggle, Congress is stronger than the President; but there may be important differences and difficulties without coming to such a struggle as this. And there is no legal way out of them. The President can not dissolve Congress; Congress can not depose the President.* Neither power called the other into being; therefore neither power can put an end to the being of the other. But in England the Ministry and the House of Commons are armed with powers of mutual destruction. The Minister can practically dissolve Parliament; that is, he can advise the King or Queen so to do. The House of Commons can practically depose the Minister; that is, it can pass a vote which leaves no course open to him but that of resigning.† That is, each power can practically destroy the other, because neither can do it formally, because whatever is done must be formally done in the name of the power which, as it formally calls into being both Minister and Parliament, can alone formally end their being. The King or Queen alone can dissolve Parliament, because it is the King or Queen alone who called the Parliament into being by a royal writ. The King or Queen alone can dismiss the Ministers, or accept their resignations, because it is

* That is, it can not depose him simply because it dislikes his policy; it can not get rid of him by a vote of want of confidence. A judicial deposition on an impeachment for a definite crime is another matter.

† It follows that, in many cases, a minister may dissolve a hostile Parliament; but so to do is his last chance. If the new Parliament is also hostile, he must resign. These are all subtilties of the unwritten constitution; they are absolutely unknown to the actual written law of England; it would seem impossible to provide for such cases beforehand by any written law.

from the King or Queen alone that they received their appointments to their offices. The House of Commons can point out by unmistakable signs whom it wishes to have at the head of affairs; but it is the King or Queen alone who can actually place him there.

The natural conclusion surely is that the power of dissolution is an essentially royal power—a power which naturally grows up in the case of a king, but which seems out of place in the case of a president or other republican executive. The King can dissolve Parliament, because it is his Parliament; the President can not dissolve Congress, because it is not his Congress. How then as to the case of France, where the President has a qualified power of dissolution, a power of dissolution with the consent of the Senate? It is plain enough whence this provision comes: it is an imitation of the provision of the American Constitution which requires that many of the chief executive acts of the President shall be confirmed by the Senate. And we may safely say that it is a wise model foolishly imitated. The joint action of President and Senate seems admirably suited for the exercise of the treaty-making power; it does not seem in the least suited for the exercise of the power of dissolution. It is surely an invidious arrangement to vest the power of dissolution, or any share in the exercise of that power, in that branch of the Legislature which is least affected by a dissolution, which is perhaps not affected by it at all. Of all the arrangements which can be even conceived in England, the most insufferable would be one which should vest the power of dissolution in the King acting with the consent of the House of Lords. But, though the limitation on the French President's power of dissolution is clearly a corrupt following of republican America, the power of dissolution itself, as vested in a republican magistrate, is no less clearly a corrupt following of monarchic Europe. The whole position of the French President is far more closely borrowed from that of European kings than is the position of the American President. His personal powers are doubtless less than those of his American brother; but that is because they are limited in exactly the same way in which the powers of a constitutional king are limited. The American President has his ministers, and his ministers have grown into a degree of importance which it is plain that the first founders of the Constitution never thought of. Still their position is wholly different from the position of the ministers of a king. In every constitutional kingdom, it is held essential that the King's ministers should be members of one or other branch of the Legislature. It is in

Parliament that they live and move, and have their being; it is Parliament which indirectly appoints, and which can indirectly remove them. But the ministers of the American President are expressly shut out from both Houses of Congress. An American Congress hears a presidential message; it never hears a ministerial statement. But the ministers of the French President hold essentially the same position as the ministers of a king. They are a parliamentary ministry, while the ministry of an American President is necessarily an extra-parliamentary ministry. It was one of the charges brought against the late French President that he chose a ministry which was extra-parliamentary. He was held, and truly, to be upsetting the safeguards of parliamentary freedom by adopting a system which was formally the same as that which was established in America as being in itself the chief of those safeguards. Doubtless it was only in form that there was any likeness between the cases; but even the formal likeness is worth noting. The truth is that the American system is strictly republican. The relations between President and Congress, whatever may be their advantages and disadvantages, follow naturally from the decision of the founders of the Constitution that the executive power should be vested in a single man and not in a council, and that that single man should be, not a king, but a magistrate, elective, terminable, and responsible. One of those consequences is that that magistrate is not clothed with the power of dissolution. In France, as far as concerns the relations among the powers of the state, all that seems to have been done is to exchange the hereditary King for a king chosen for a term. The French President's relations to the Assembly are clearly far more like those of a constitutional king than they are like those of an American President. Among his other kingly relations, it did not seem so very unnatural to give him the kingly power of dissolution. But some kind of lingering feeling that it was a somewhat singular power to place in the hands of a republican magistrate, seems to have suggested the limitation that the power can be exercised only with the consent of the Senate.

We come back then to our old definition. The President can not dissolve Congress, because it is not his Congress. The King can dissolve Parliament, because it is his Parliament, because, at all events, lawyers have ruled that it shall be his Parliament. But it is quite worth while to mark the steps by which the Parliament became the King's Parliament, and to mark, at the same time, the steps by which the power of dissolution grew up. In the primitive

Assembly of the nation, as in any other primitive assembly, the Assembly was in no sense the King's Assembly. He did not call the Assembly into being; for the Assembly was simply the nation; he at most, as a matter of convenience, fixed the times and places of its meetings. But he could not fix the time and place of the most important of all assemblies of the nation, that which, when the King died, came together to choose his successor. It is plain that, as long as the Crown was habitually elective, there was no room for the two favorite doctrines of lawyers, the doctrine that Parliament draws its being from the King's writ, and the kindred doctrine—now got rid of—that Parliament ceases to exist along with the King from whose writ it drew its being. The power of dissolution, in the modern sense, could not exist as long as the Assembly was the nation, or such part of the nation as was able and willing to attend. It could not exist till the Assembly had put on a representative and elective shape. That is, in England it could not exist till the thirteenth century. But, though it could not begin before, it did not at all follow that it must begin then; and in fact the practice of dissolution, in anything at all answering to modern ideas, is of much later date. It arose, as has been already said, out of the practice of prorogation. An early assembly came together; it had the talk with the King from which it took its name of Parliament; it then dispersed, and its members went home again. When the state of public affairs made it needful that there should be another talk between king and people, another assembly came together, an assembly summoned by fresh writs, and whose elective members were chosen by fresh elections. Edward III. sometimes held more than one Parliament in the same year; but they were held by fresh writs and fresh elections. The counties, cities, and boroughs may or may not have elected the same representatives a second time—that was their own affair; the members, whether the same or different, appeared each time by virtue of a fresh choice. There was as yet no political or social *status* attached to the position of member of Parliament; the knight, citizen, or burgess was simply sent by his fellows to act in their names on a particular occasion. The practice of prorogation, the practice of continuing the same Parliament in being for several years, of calling the same men together without any fresh election, is a later subtilty, one which is not likely to be thought of during the early stages of a Parliamentary constitution. It became established as a common practice in the

course of the fifteenth century. And this practice necessarily involved the power of dissolution. In the earlier state of things, when the business for which the Parliament came together was done, the Parliament was dissolved as a matter of course. But now, at the end of each session, when the immediate business was done, the question arose: "Shall this Parliament be dissolved at once, and another Parliament be summoned when another is wanted; or shall this Parliament be simply prorogued for a season, ready to come together again whenever there is fresh business for it to do?" Thus the King had the choice of putting an end to the Parliament, or of keeping it alive, as best suited his ends. If it so suited him, he could keep on the same Parliament from the beginning of his reign to the end. And many Parliaments, notably one famous one of Charles II., were kept in being for many years. This was a grievance: for a Parliament might thus go on, nominally representing the nation, long after it had ceased to possess the confidence of the nation. There was therefore no feeling against the Crown's power of dissolution, while there was a feeling against the Crown's power of keeping on a perhaps subservient Parliament by endless prorogations. Hence we find more than one act passed to limit the duration of Parliaments, while the power of dissolution was never limited, except by the single act which, under most special circumstances, debarred the King from dissolving the Long Parliament. The power of dissolution is a power which naturally fits in with the conventional relations of king, ministry, and Parliament, as now understood in England. It had no place in the wholly different relation between the Legislature and the Executive which was established by the American Constitution. In that Constitution therefore it is not found. In the Constitution of the French republic it does find a place, because in that Constitution the relations of the Executive toward the Legislature are rather kingly than strictly presidential.

At the same time, though the power of dissolution fits in well with the ordinary practice of constitutional monarchies, it is by no means necessarily involved in that practice. There are constitutional kingdoms where the power does not exist. Its practical working has a good deal to do with the duration of Parliaments. As long as a Parliament may last for so long a time as seven years, the power of shortening its life is not likely to be found fault with. If the duration of Parliaments should ever be reduced to one year, we may

be sure that the power of dissolution will vanish. In the case of a reduction to three years, the question whether there should be a power of dissolution or not will have to be distinctly argued on its merits; and a most interesting and instructive debate ought to arise out of the argument.

EDWARD A. FREEMAN.